Supreme Court, U.S.
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In The

Supreme Court of the United States

CARL FRUGE AND DARLA MONK FRUGE, INDIVIDUALLY AND ON BEHALF OF CASEY FRUGE AND DERRICK FRUGE,

Petitioners,

v.

ANADARKO PETROLEUM CORPORATION; STOKES & SPIEHLER USA, INCORPORATED; AND GREG ZIELINSKI, INCORPORATED,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

JENNIFER JONES
Counsel of Record for Petitioners
J. B. JONES, JR.
JONES LAW FIRM
Post Office Box 1550
Cameron, Louisiana 70631
(337) 775-5714

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED FOR REVIEW

Whether the trial court and Court of Appeal erred in holding that Louisiana law establishing the duties between principals and independent contractors should be applied to a case arising on the Outer Continental Shelf, when such law is in conflict with federal regulations.

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JURISDICTION

The Fifth Circuit filed its decision on July 23, 2003 and entered an order denying petitioners' motion for rehearing on August 19, 2003. This Court has jurisdiction under 28 U.S.C.A. § 1254(1) to review the circuit court's decision on a writ of certiorari.

STATUTORY PROVISIONS INVOLVED

43 U.S.C.A. § 1333(a)(1) and (2)(A)

30 CFR 250.105, 250.106, 250.107, 250.146, 250.400, 250.413 and 250.514

STATEMENT OF FACTS

The basis of jurisdiction in the court of first instance was 28 U.S.C.A. § 1331, a civil action arising under the Constitution, laws and treaties of the United States. In this case, the specific law at issue was 43 U.S.C.A. § 1333, providing for jurisdiction over actions arising out of the conducting of mineral operations on the Outer Continental Shelf.

This is an action for personal injuries sustained on a drilling platform on the Outer Continental Shelf off the coast of Louisiana. The district court granted motions for summary judgment filed by the platform owner (Anadarko Petroleum Corporation, the mineral lessee) and two independent contractors hired by the mineral lessee to supervise and monitor drilling operations (Stokes & Spiehler USA, Inc. and Greg Zielinski, Inc.).

Petitioner, Carl Fruge, was an employee of M-I L.L.C. He was working on Anadarko's stationary drilling platform, where drilling operations were being conducted by Parker Drilling Offshore Corporation. On November 27, 2000, a high pressure hose, which was a part of a Parker drilling rig attached to the Anadarko platform, exploded, spewing drilling fluid into Petitioner's face and slamming his entire body against a steel-enclosed mud cleaning unit of his employer, M-I. As a result of the accident, Petitioner lost his sight in both eyes and injured his back. The hose had not been tested by Anadarko or their representatives prior to the commencement of operations by the M-I crew. Two sets of valves which would have prevented the explosion either failed or were not in operation.

The trial court held that, as a matter of Louisiana law, Anadarko, Stokes & Spiehler and Zielinski were not subject to strict liability under Louisiana law, were not negligent and were not responsible for the negligent acts, if any, of Parker. Federal regulations of the Mineral Management Service impose joint and several liability on Anadarko and its agents, Stokes & Spiehler and Zielinski for violations of safety regulations promulgated by the MMS. However, the Fifth Circuit affirmed the granting of summary judgment by the district court, holding that

these regulations did not apply and that Louisiana law governed the outcome of this case.

REASONS FOR GRANTING THE PETITION

I. THE FIFTH CIRCUIT COURT OF APPEAL HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT. THE DECISION OF THE FIFTH CIRCUIT IS IN CLEAR CONFLICT WITH THE EXPRESS LANGUAGE OF A CONGRESSIONAL STATUTE BY PERMITTING A STATE LAW TO PREEMPT THE APPLICATION OF FEDERAL REGULATIONS ON THE OUTER CONTINENTAL SHELF.

The Outer Continental Shelf Lands Act provides that federal law and jurisdiction is extended to the subsoil and seabed of the Outer Continental Shelf and all artificial islands attached to the seabed erected for the purpose of exploring for, developing, or producing resources there from. State law will apply to cases arising on the Outer Continental Shelf only to the extent that state law is not inconsistent with federal law or regulation. 43 U.S.C.A. § 1333(a). The Fifth Circuit has held that state law may be applied pursuant to the OCSLA only if all three of the following conditions are satisfied:

1. The controversy must arise on a situs covered by the OCSLA.

2. Federal maritime law must not apply of its own force.

3. The state law must not be inconsistent with federal law.

Union Texas Petroleum v. PLT Engineering, 895 F.2d 1043 (5th Cir.), *cert. denied*, 498 U.S. 848, 111 S.Ct. 136, 112 L.Ed.2d 103 (1990). Congress has provided that "Paragraph (2) adopts State law as Federal law, to be used when Federal statutes or regulations of the Secretary of the Interior are inapplicable." S.Rep.No. 411, 83d Cong., 1st Sess. 23 (1953), quoted by this Court in *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 89 S.Ct. 1835, 23 L.Ed.2d 360 (1969).

In keeping with this mandate, the Fifth Circuit correctly held that Louisiana law pertaining to predial servitudes could not be applied to a dispute arising out of Outer Continental Shelf operations because it conflicted with federal regulations. Federal regulations prohibited the owner of a servient estate from abandoning the platform to the owner of a dominant estate. *Shell Offshore, Inc. v. Kirby Exploration Co. of Texas*, 909 F.2d 811 (5th Cir. 1990). The Fifth Circuit has characterized Section 1333(a)(2)(A) of the OCSLA as "a Congressionally mandated choice of law provision." *Union Texas Petroleum Corporation v. PLT Engineering, Inc.*, 895 F.2d 1043, 1050 (5th Cir. 1990).

However, relying on *Coulter v. Texaco, Inc.*, 117 F.3d 909 (5th Cir. 1999), the Fifth Circuit held in the case *sub judice* that there was no conflict or inconsistency between federal regulations promulgated by the Mineral Management Service and Louisiana state law. Therefore, pursuant to 43 U.S.C.A. § 1333(a)(2)(A), Louisiana law provided the principles of substantive law governing this action, and required dismissal of the Petitioners' claim.

Petitioners contend that there is in fact a clear and irreconcilable conflict between federal regulations and Louisiana law. This being the case, the provisions of state law must yield to the mandates of federal regulation. Pursuant to the Outer Continental Shelf Lands Act, Congress has provided that the applicable laws governing this accident are federal laws and regulations. State laws may be applied as "surrogate" federal laws only to the extent that they are not inconsistent with federal laws or regulations. This Court has emphasized that the law to be applied in actions governed by the OCSLA is "federal law, supplemented by state law of the adjacent state . . ." 43 U.S.C.A. § 1333(a)(2)(A); *Rodrigue v. Aetna Casualty Co.*, 395 U.S. 352, 89 S.Ct. 1835, 23 L.Ed.2d 360 (1969). *See also Bartholomew v. CNG Producing Company*, 832 F.2d 326 (5th Cir. 1987).

Louisiana law provides that a principal is not liable for the actions of its independent contractor unless the principal retained "operational control" over the contractor's work or expressly or impliedly approved the contractor's unsafe work practice which resulted in injury to the plaintiff. *Coulter v. Texaco, Inc.*, 117 F.3d 909 (5th Cir. 1997). On the other hand, regulations of the Mineral Management Service impose joint and several liability on both the principal (mineral lessee) and the independent contractor (lease operator) for violation of safety regulations of the MMS. 30 CFR 250.146.

In *Romero v. Mobil Exploration and Producing North America, Inc.*, 939 F.2d 307 (5th Cir. 1991), the plaintiff contended that the defendant violated MMS federal regulations, which at that time imposed a general requirement that drillers must at all times keep their wells under control and utilize trained and competent personnel

to assure the safety and protection of lives and property. 30 CFR 250.50. However, the Fifth Circuit rejected the plaintiff's claim, holding that violation of the MMS regulations cannot form the basis of a state law negligence claim. Similarly, in *Dupre v. Chevron U.S.A., Inc.*, 109 F.3d 230 (5th Cir. 1997), the Fifth Circuit held that (1) the MMS regulations adopted pursuant to the Outer Continental Shelf Lands Act provide no basis for an implied cause of action and the mineral lessee; (2) the MMS regulations do not create an independent duty under Louisiana law on the part of the mineral lessee to protect a contractor's employee from hazards created by the contractor; and (3) the mineral lessee/platform owner did not contractually assume a duty of reasonable care to the employees of a contractor under the terms of its lease with the United States, which incorporated the federal regulations.

However, it is of critical importance to note that *Coulter, Romero,* and *Dupre* were all decided prior to the amendment to the MMS regulations which now place primary responsibility on the mineral lessee and its agent for supervising the operations and maintaining safety over the operations and equipment without regard to principles established by Louisiana law regarding "operational control" or authorization of unsafe work practices. Under the current version of the regulations, the lessee, the operator, and the person actually performing the activity are jointly and severally responsible for complying with offshore MMS regulations.

In fact, prior to the 1997 amendments (effective only after the Fifth Circuit's opinions in *Coulter, Romero* and *Dupre*), there was no mention of joint and several liability. The comments to the 1997 amendments (effective August

20, 1997) to the MMS regulations specifically provide that the amendments are intended to clarify the position of the MMS that co-lessees and operating rights owners are jointly and severally liable for compliance with MMS regulations and the terms and conditions of their OCS lease for nonmonetary obligations. 62 FR 27948-49. The comments also provide:

> Every lessee or working interest owner who executes the designation of operator required under the provisions of 250.8, Form MMS-1123, acknowledges its joint and several liability . . . 62 FR 27949.
>
> This rule simply clarifies our position that nonmonetary lease obligations are joint and several among co-lessees (i.e., multiple lessees) and owners of operating rights . . . 62 FR 27949.
>
> (E)ach party that executes a designation of operator agreement recognizes the joint and several nature of OCS lease obligations. The designation of operator (Form MMS-1123) designates the entity that the co-lessees authorize to conduct lease operations as each of the co-lessee's "operator and local agent." Each lessee, by execution of the designation of operator, agrees that "In case of default on the part of the designated operator, the signatory lessee will make full and prompt compliance with all regulations, lease terms, or orders of the Secretary of the Interior (Secretary) or his representative . . . 62 FR 27949.
>
> A trade organization commented that the imposition of joint and several liability should be prospective only because the Secretary has no authority to issue retroactive rules. . . . This rule merely codifies what has been the law under the OCSLA since enactment and the common law . . . 62 FR 27949.

> A trade organization stated, with respect to joint and several liability, that absent an express rule on the subject at the time of the lease, one should look to the common law to understand what the parties understood their contract to mean. It cites *Resolution Trust Corporation v. Feldman*, 3 F.3d 5 (1st Cir. 1993) for the proposition that parties to a contract may agree to limit the liability of each of several promisors. . . . While parties to a contract may agree to limit liability, neither Congress nor the Secretary ever agreed to limit the liabilities of OCS lessees for operational obligations. The relevant common law rule is that stated in Restatement of the Law of Contracts, Second 289(1).
>
> Where two or more parties to a contract promise the same performance to the same promise, each is bound for the whole performance thereof, whether his duty is joint, several, or joint and several . . . 62 FR 27950.

See also 30 CFR 250.105 and 30 CFR 250.106.

The 1997 amendment to 30 CFR 250.8 provided that lessees and operating rights owners were jointly and severally responsible for performing nonmonetary lease obligations. Effective December 28, 1999, these provisions were revised and renumbered. 64 FR 72756, 72783. The current provision providing for joint and several liability of lease owners and lease operators is found at 30 CFR 250.146. The text now provides:

250.146 Who is responsible for fulfilling leasehold obligations?

(a) When you are not the sole lessee, you and your co-lessee(s) are jointly and severally

responsible for fulfilling your obligations under the provisions of 30 CFR parts 250 through 282, unless otherwise provided in these regulations.

(b) If your designated operator fails to fulfill any of your obligations under 30 CFR parts 250 through 282, the Regional Supervisor may require you or any or all of your co-lessees to fulfill those obligations or other operational obligations under the Act, the lease, or the regulations.

(c) Whenever the regulations in 30 CFR parts 250 through 282 require the lessee to meet a requirement or perform an action, the lease, operator (if one has been designated), and the person actually performing the activity to which the requirement applies are jointly and severally responsible for complying with the regulation.

It is clear beyond question that the above provision requires both the lessee and the designated operator to insure compliance with all provisions of 30 CFR parts 250 through 282. In this case, the plaintiff has alleged that the lessee and the operator failed to comply with several safety provisions, including parts 250.107, 250.400, 250.413, and 250.514.

The issue, therefore, is not whether the regulations of the MMS provide a duty and a cause of action under Louisiana law. The sole issue is whether the MMS regulations conflict with Louisiana law, in which case the OCSLA provides that the regulations must prevail and Louisiana law must be disregarded.

The regulations are in irreconcilable conflict with Louisiana law, which allows a principal to "contract away" his duty to comply with safety regulations established by the MMS. Part 250.413 specifically requires the lessee to provide on-site supervision of drilling operations on a 24-hour per day basis and to maintain rig-floor surveillance of drilling activity on a continuous basis. There is no authority in this situation for the use of Louisiana law as "surrogate" federal law – the federal regulations themselves are applicable to define the duties and liabilities of the parties.

The decision of the Fifth Circuit Court of Appeals conflicts with the principle of federal preemption. State law is preempted to the extent that it actually conflicts with federal law. *English v. General Electric Co.*, 496 U.S. 72, 78-79, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990). *See also People v. Torch Energy Services, Inc.*, 102 Cal.App.4th 181, 125 Cal.Rptr.2d 365 (2002). Therefore, it was error to apply Louisiana law to Petitioners' claim.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the decision of the Fifth Circuit Court of Appeals.

Respectfully submitted,

JENNIFER JONES
Counsel of Record for Petitioners
J. B. JONES, JR.
JONES LAW FIRM
Post Office Box 1550
Cameron, Louisiana 70631
(337) 775-5714

APPENDIX

337 F.3d 558

United States Court of Appeals,
Fifth Circuit.

Carl FRUGE, on behalf of Casey FRUGE;
Darla Monk Fruge, on behalf of Casey Fruge;
Derrick Fruge, Plaintiffs-Appellants,
v.
PARKER DRILLING COMPANY, et al., Defendants,
Anadarko Petroleum Corporation; Stokes & Spiehler
USA Incorporated; Greg Zielinski Incorporated,
Defendants-Appellees.

No. 02-30659.

July 23, 2003.

J.B. Jones, Jr., Jennifer Ann Jones (argued), Jones Law Firm, Cameron, LA, for Plaintiffs-Appellants.

Bradford Hyde Felder (argued), John A. Jeansonne, Jr., Jeansonne & Remondet, Lafayette, LA, for Anadarko Petroleum Corp.

Melvin A. Eiden (argued), H. Lee Leonard, Leonard & Leonard, Lafayette, LA, for Stokes & Spiehler USA, Inc.

W. Gerald Gaudet (argued), Voorhies & Labbe, Lafayette, LA, for Greg Zielinski Inc.

Appeals from the United States District Court for the Western District of Louisiana.

Before DUHE, EMILIO M. GARZA and DeMOSS, Circuit Judges.

DUHE, Circuit Judge:

In this suit involving personal injuries on a drilling platform on the outer continental shelf off the coast of Louisiana, the district court granted summary judgment to the platform owner and two independent contractors whom the owner had hired to monitor the drilling operation. Holding as a matter of law that Appellees are not subject to strict liability, are not guilty of negligence, nor responsible for the negligent acts, if any, of the drilling contractor (another independent contractor not appearing in this appeal), or for loss of evidence, we affirm.

I.

Defendant-Appellee Anadarko Petroleum Corporation ("Anadarko") as principal contracted with Parker Drilling Offshore Corporation ("Parker") as drilling contractor to complete a well on Anadarko's stationary platform. Plaintiff's employer, M-I, LLC, was under contract with Anadarko to provide filtration services for the project. Plaintiff-Appellant Carl Fruge was operating a filter unit on the platform when a discharge hose which was part of Parker's rig ruptured and injured him.

The ruptured hose was not produced for examination despite Plaintiff's demands. The hose is lost. The on-site supervisors saw the ruptured hose at the time of the accident and several times after the accident. Those supervisors were employees of Defendants-Appellees Stokes & Spiehler USA, Inc., and Greg Zielinski, Inc., with whom Anadarko had contracted to provide company men for on-the-job supervision.

Fruge sued Parker, Anadarko, Stokes & Spiehler, and Zielinski, among others. Anadarko, Stokes & Spiehler, and

Zielinski moved for summary judgment on the basis that they were not negligent and did not exercise operational control over Parker's drilling operations so bore no responsibility for Parker's alleged negligence.

The district court granted all three motions. Fruge's claims against Parker remain in the district court.[1]

This Court reviews grants of summary judgment *de novo,* applying the same standard as the district court, viewing the evidence in a light most favorable to the nonmovant. *Coulter v. Texaco,* 117 F.3d 909, 911 (5th Cir.1997); *Coleman v. Houston Indep. Sch. Dist.,* 113 F.3d 528, 533 (5th Cir.1997).

II.

Federal jurisdiction is predicated on the Outer Continental Shelf Lands Act (OSCLA), 43 U.S.C. § 1331 *et seq.* OCSLA adopts the law of the adjacent state (Louisiana) as surrogate federal law, to the extent that it is not inconsistent with other federal laws and regulations. *Bartholomew v. CNG Producing Co.,* 832 F.2d 326, 328 (5th Cir.1987); 43 U.S.C. § 1333(a)(2)(A). Thus the law applicable is "federal law, supplemented by state law of the adjacent state." *Rodrigue v. Aetna Cas. & Sur. Co.,* 395 U.S. 352, 355, 89 S.Ct. 1835, 1837, 23 L.Ed.2d 360 (1969).

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[1] Appellate jurisdiction is appropriate, as Fruge noticed appeals from judgments certified as final under Fed.R.Civ.P. 54(b). We agree with the parties that the timeliness of the appeal under 28 U.S.C. § 1292(a)(3) is not at issue, because this case does not arise under admiralty jurisdiction.

Bearing in mind these principles, we are first asked to determine whether federal regulations create civil liability beyond the liability under state law as enunciated in *Coulter v. Texaco.* Applying Louisiana negligence law, *Coulter* held that a principal is not liable for the actions of its independent contractor unless the principal retained "operational control" over the contractor's work (discussed *infra*) or expressly or impliedly approved its unsafe work practice that led to an injury. *Coulter,* 117 F.3d at 912.

Fruge argues that *Coulter* is not an appropriate precedent because it did not deal with federal Minerals Management Service ("MMS") regulations enacted after *Coulter.* Those regulations, according to Plaintiff, place primary responsibility on the mineral lessee (Anadarko) and its agents (Zielinski and Stokes & Spiehler) for supervising the operations and maintaining safety over the operations and equipment – without any regard to "operational control" or authorization of an unsafe work practice. If a mineral lessee establishes that it did not maintain operational control, according to Fruge, it has necessarily violated the federal regulations, creating liability as a matter of law. The key regulation, in Plaintiff's view, charges that the lessee, the operator, and the person actually performing the activity "are jointly and severally responsible" for complying with the offshore MMS regulations. 30 C.F.R. § 250.146(a) & (c). This regulation further allows the Regional Supervisor to require any or all co-lessees to fulfill obligations under the regulations or the

lease, if the designated operator fails to fulfill obligations under the regulations. *Id.* § 146(b).[2]

The MMS regulations in place at the time of *Coulter* similarly carried the concept of responsibility on the parts of both the lessee and the operator for obligations under the lease and the regulations.[3] The Secretary has

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[2] The regulation provides as follows:

§ 250.146 Who is responsible for fulfilling leasehold obligations?

(a) When you are not the sole lessee, you and your co-lessee(s) are jointly and severally responsible for fulfilling your obligations under the provisions of 30 CFR parts 250 through 282, unless otherwise provided in these regulations.

(b) If your designated operator fails to fulfill any of your obligations under 30 CFR parts 250 through 282, the Regional Supervisor may require you or any or all of your co-lessees to fulfill those obligations or other operational obligations under the [OCSLA], the lease, or the regulations.

(c) Whenever the regulations in 30 CFR parts 250 through 282 require the lessee to meet a requirement or perform an action, the lessee, operator (if one has been designated), and the person actually performing the activity to which the requirement applies are jointly and severally responsible for complying with the regulation.

30 C.F.R. § 250.146 (2002) (eff. Jan. 27, 2000, 64 Fed.Reg. 72,756 (Dec. 28.1999)).

[3] July 29, 1997, was the decision date of *Coulter.* The MMS regulations at that time provided,

§ 250.8 Designation of operator.

In all cases *where operations are not conducted by an exclusive owner* of record, a *designation of operator* shall be submitted to the Regional Supervisor prior to the commencement of operations. This designation *will be accepted as authority for the operator,* or the operator's local representative, *to act on behalf of the lessee and to fulfill the lessee's obligations under the Act and the regulations in this part.* . . . In case of a termination [of the authority of the operator] or in the event of a controversy between the lessee

(Continued on following page)

considered the law to have provided for joint and several liability of co-lessees and the operator since the enactment of OCSLA (1953) and the common law, through the present date.[4] Although the regulations have been modified a

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and the designated operator, *both the lessee and the operator will be required to protect the interests of the lessor.*

30 C.F.R. § 250.8 (1988) (emphasis added). This regulation became effective May 31, 1988, 53 Fed.Reg. 10,596 (April 1, 1988), and was superseded August 20, 1997, by § 250.8, *infra* n. 4.

[4] The MMS has taken the position, since long before the 1988 regulation quoted in the previous note, that the [sic] both lessee and the designated operator are required to bear the non-monetary obligations under the lease as well as any obligations under the regulations. Publishing notice of the superseding regulation (reproduced below) which used the phrase "joint and several" to describe non-monetary lease obligations, the MMS expressed its intention that the regulation simply *"[c]larifie[d][its] position* that co-lessees and operating rights owners are *jointly and severally liable for compliance with our regulations and the terms and conditions of their* OCS oil and gas and sulphur *lease* for nonmonetary obligations." 62 Fed.Reg. 27,948, 27,948-49 (May 22, 1997) (emphasis added). That "clarifying" regulation provided,

> § 250.8 Designation of operator.
>
> This section explains the requirement for designation of an operator to conduct operations on a lease where the operator is not the sole lessee (record title owner) and owner of operating rights.
>
> (a) Each record title owner (lessee) or operating rights owner for a lease must provide the Regional Supervisor a *designation of operator* in each case where someone other than an exclusive record title and operating rights owner will conduct lease operations. . . .
>
> (1) *This designation of operator is authority for the operator* to act on behalf of each lessee and operating rights owner and *to fulfill each of their obligations under the Act, the lease, and the regulations in this part.*
>
> . . .
>
> (3) If you terminate a designation of operator or a controversy develops between you and your designated operator, *you and the operator must protect the lessor's interests.*

(Continued on following page)

. . .

(b) *Lessees and operating rights owners are jointly and severally responsible for performing nonmonetary lease obligations*, unless otherwise provided in the regulations in this chapter. *If the designated operator fails to perform any obligation under the lease or the regulations in this chapter, the Regional Director may require any or all of the co-lessees and operating rights owners to bring the lease into compliance.* 30 C.F.R. § 250.8 (1997) (emphasis added) (effective Aug. 20, 1997, 62 Fed.Reg. 27,954 (May 22, 1997), redesignated as 30 C.F.R. § 250.108 effective June 30, 1998, without any change in substance, 63 Fed.Reg. 29,478, 29,479 (May 29, 1998) (renumbering §§ 250.0-250.26 as §§ 250.100- 250.126), and superseded Jan. 27, 2002 by 30 C.F.R. § 250.146 (2002), *supra* n. 2). Further revealing the MMS's understanding that joint and several liability had been the law since before *Coulter,* the Federal Register reported the following comment and response relative to proposed § 250.8(a)(1):

Comment: A trade organization commented that the imposition of joint and several liability should be prospective only because the Secretary has no authority to issue retroactive rules.

Response: *This rule merely codifies what has been the law under the OCSLA, since enactment and the common law.* As previously noted, section 5(a)(2)(C)(II) of the OCSLA describes those who jointly own interests in a lease as "partners."

62 Fed.Reg. 27,948, 27,950 (May 22, 1997) (emphasis added). Announcing the regulation as final, the MMS again demonstrated that it had long held the view that operating rights owners and lessees are jointly and severally responsible for nonmonetary lease obligations as well as obligations to comply with MMS regulations in the following commentary: Section 250.8 . . . Since joint and several liability is closely related to the requirement for the designation of an operator, we have consolidated several provisions of the proposed rule in a revised § 250.8. . . . Every lessee or working interest owner who executes the designation of operator required under the provisions of § 250.8, Form MMS-1123, acknowledges its joint and several liability.

Comment: Twelve respondents expressed opposition to, or lack of support for, what they characterized as "the effort to establish joint and several liability between co-lessees or between assignors and assignees of OCS leases."

(Continued on following page)

number of times, the regulations and commentary manifest the intention to retain this shared liability over the years. Nothing in the 2002 regulations preempts *Coulter,* and *Coulter* is therefore still precedent.

Additionally, this Court has held that a violation of the MMS regulations does not give rise to a private cause of action. *Romero v. Mobil Exploration & Producing North America, Inc.,* 939 F.2d 307, 310-11 (5th Cir.1991). The regulations govern the parties' joint and several liabilities vis-a-vis the Government,[5] not amongst themselves.[6] This

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> Response: *This rule simply clarifies our position that nonmonetary lease obligations are joint and several among co-lessees (i.e., multiple lessees) and owners of operating rights.* Section 5(a)(2)(C)(II) of the Outer Continental Shelf Lands Act (OCSLA) equates multiple lessees to "partners."
>
> *Our position on this matter remains the same as it was May 10, 1954, the effective date of the regulations the Department of the Interior (DOI) issued to implement the OCSLA of 1953*
>
> . . .
>
> *As previously noted, each party that executes a designation of operator agreement recognizes the joint and several nature of OCS lease obligations.* The designation of operator (Form MMS-1123) designates the entity that the co-lessees authorize to conduct lease operations as each of the co-lessee's "operator and local agent." Each lessee, by execution of the designation of operator, agrees that "In case of default on the part of the designated operator, the signatory lessee will make full and prompt compliance with all regulations, lease terms, or orders of the Secretary of the Interior (Secretary) or his representative."

Id. at 27,949 (emphasis added).

[5] *See, e.g.,* 62 Fed.Reg. 27,948, 27,950 (discussing 30 C.F.R. § 250.8(a)(1) (eff. Aug. 20, 1997), *supra* n. 4) in which the MMS declared, "While parties to a contract may agree to limit liability, neither Congress nor the Secretary ever agreed to limit the liabilities of OCS lessees for operational obligations."

principle also defeats Fruge's contention that Anadarko had a duty under the regulations to use the best available and safest technology to test the hose. Under the drilling contract, the obligation to maintain and repair Parker's equipment and to comply with applicable safety regulations rested on Parker's shoulders.[7] The OCSLA regulations do not create an independent duty under Louisiana

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[6] Fruge also argues that the regulations making the duties joint and several perforce make the duties non-delegable among the private parties. Discussing joint and several liability of § 250.108, the MMS responded to a comment on a related regulation making lessees and owners of operating rights jointly and severally responsible for obligations relating to abandoning well bores (30 C.F.R. § 250.110). In the following exchange, the MMS made clear that the joint and several liability to the MMS for fulfillment of lease obligations does not prevent the parties from parsing out the obligations differently among themselves by contract:

> Section 250.110 General requirements. Comment: Two respondents recommended that paragraph (b) of § 250.110, General requirements, be changed to clarify the extent of responsibility of prior lessees for obtaining compliance with accrued obligations. Response: We have modified the text of this provision to present its contents in easily understood English. While this rule determines *who is liable to MMS for performance of nonmonetary obligations, it is not our intention that this rule preclude private agreements concerning the allocation of liabilities between and among the affected parties.* Nor does this rule specify against whom we will take enforcement action if we discover noncompliance.

62 Fed.Reg. 27948, 27,949-50 (emphasis added). The Secretary further declared, "MMS has never given its imprimatur to efforts of lessees to limit *their liabilities to MMS,* much less created a property right to such limitations." *Id.* at 27,950 (emphasis added).

[7] Master Domestic Daywork Drilling Contract § 503(b) (Parker and its personnel to "comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and lease or contract provisions regarding pollution, safety and the environment"); *id.* § 403 (Parker "responsible for the maintenance and repair" of all its own equipment).

negligence law. *Dupre v. Chevron U.S.A., Inc.,* 109 F.3d 230, 231 (5th Cir. 1997). Therefore, we will follow the guidance of *Coulter* and *Romero,* finding nothing in the MMS regulations to preempt their application.

III.

Fruge next argues that, regardless of the MMS regulations, under the *Coulter* standard, the evidence left a question of fact whether Anadarko and its company representatives retained operational control over the work of its independent contractor, Parker. To determine whether the exception for operational control makes a principal liable, we first examine the extent to which Anadarko contractually reserved the right to control the work. *Coulter,* 117 F.3d at 912.

Under the contract between Parker and Anadarko, Parker was "responsible for the maintenance and repair of all [its own equipment]." Master Domestic Daywork Drilling Contract § 403. Parker also was responsible for the "operation and control of the Drilling Unit," including supervision and having "final authority and responsibility for the safety and operation of all systems and all personnel associated with the drilling operation." Contract § 502(a). When the contract assigns the independent contractor responsibility for its own activities, the principal does not retain operational control. *Coulter,* 117 F.3d at 912.

Operational control exists only if the principal has direct supervision over the step-by-step process of accomplishing the work such that the contractor is not entirely free to do the work in his own way. *LeJeune v. Shell Oil Co.,* 950 F.2d 267-270 (5th Cir.1992); *McCormack v. Noble*

Drilling Corp., 608 F.2d 169, 175 n. 9 (5th Cir.1979). Here, Parker was exclusively responsible for controlling the details of the work it performed: the contract provided that Parker "shall be an independent contractor with respect to performance of all work hereunder. [Anadarko] shall have *no direction or control* of [Parker] or [Parker's] Personnel except in the results to be obtained." Contract § 105 (emphasis added).

The summary judgment evidence shows Anadarko provided on-site supervision 24-hours per day, via various independent contractors whose employees reported to Anadarko staff engineers on a daily basis. The physical presence of a representative of a principal is not sufficient to show supervision or control. *Ainsworth v. Shell Offshore, Inc.*, 829 F.2d 548, 550-51 (5th Cir.1987), *cert. denied*, 485 U.S. 1034, 108 S.Ct. 1593, 99 L.Ed.2d 908 (1988), *Graham v. Amoco Oil Co.*, 21 F.3d 643, 646 (5th Cir.1994). Periodic inspections by a principal's "company man" do not equate to that principal retaining control over the operations conducted by a drilling crew. *Ainsworth*, 829 F.2d at 550. "In short, absent an express or implied order to the contractor to engage in an unsafe work practice leading to an injury, a principal . . . cannot be liable under the operational control exception." *Coulter*, 117 F.3d at 912.

Summary judgment is appropriate because Plaintiff has failed to present facts sufficient to distinguish his case from *Coulter*. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (summary judgment is appropriate unless plaintiff can present evidence to support each essential element of his claim). "This Court has consistently held on similar facts that a principal, such as [Anadarko], who hires independent

contractors over which he exercises no operational control has no duty to discover and remedy hazards created by its independent contractors." *Wallace v. Oceaneering Int'l,* 727 F.2d 427, 437 (5th Cir.1984). On the evidence of record, summary judgment is proper for Anadarko as well as the employers of Anadarko's company men, Zielinski and Stokes & Spiehler, neither of whom are responsible for the alleged negligent acts of an independent contractor of their principal.

IV.

As alternative grounds for liability, Fruge argues that Anadarko or its representatives had custody of the defective hose that caused Fruge's injuries or that the hose was a component part or appurtenance to Anadarko's platform, resulting in custodian or premises liability under the Louisiana Civil Code. Indisputably, Parker provided the hose and Parker employees operated its equipment.

The first requirement for custodial liability under Louisiana Code articles 2317 and 2317.1,[8] is that the "thing" that caused the injury be in the custody of the defendant. Although the owner is presumed to have custody, a non-owner defendant may have custody over

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[8] Louisiana Civil Code article 2317 provides, "We are responsible, not only for the damage occasioned by our own act, but for that which is caused by . . . the things which we have in our custody." Article 2317.1 provides, "The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage," if the damage could have been prevented by the exercise of reasonable care.

property if "he exercises direction and control of the thing and derives some benefit from it." *Coulter,* 117 F.3d at 913 & n. 10. The mere presence of Anadarko's company man does not create the kind of supervision and control necessary to establish that Anadarko had custody over the Parker rig or the hose that ruptured. Neither the presence of company men who monitored the contractor's performance nor the limited involvement of engineers "comes anywhere close to creating the kind of supervision and control necessary" to establish the principal's custody over the drilling rig or the hose for purposes of article 2317. *Coulter,* 117 F.3d at 914.

As for premises liability under article 2322,[9] a prerequisite to recovery is that Parker's rig "had become an appurtenance to, or integral part of, [Anadarko's] platform by virtue of that rig's physical attachment to that structure." *Coulter,* 117 F.3d at 914. Things are considered a component part of a construction for purposes of assessing premises liability under article 2322 if they are "permanently attached" to a building or other construction within the meaning of article 466. *Coulter,* 117 F.3d at 914. "Things are considered permanently attached if they cannot be removed without substantial damage to themselves or to the immovable to which they are attached." La. Civ.Code art. 466.

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[9] Louisiana Civil Code article 2322 makes the owner of a building "answerable for the damage occasioned by its ruin, when this is caused by neglect to repair it, or when it is the result of a vice or defect in its original construction," if he knew or should have known of the vice or defect which caused the damage, and the damage could have been prevented by the exercise of reasonable care.

Plaintiff has pointed out no evidence that Parker's rig became a component part of Anadarko's platform. The only summary judgment evidence is to the contrary – that the rig moved from platform to platform without substantial damage to either the rig or the platform. As such, we hold as a matter of law that the rig is not an appurtenance for purposes of article 2322. *See Coulter,* 117 F.3d at 914-918.

Fruge's theories of recovery under articles 2317, 2317.1, and 2322 therefore fail.

V.

Fruge finally argues that according to the two cases decided at *Marrocco v. General Motors Corp.,* 966 F.2d 220 (7th Cir.1992), Anadarko should be held liable as a matter of law for loss of the hose. Those two cases are distinguishable in that each involved violation of a protective order. *See id.* at 221.

Here, the hose was lost before the suit was filed, when no such order to preserve evidence had issued. Moreover, Plaintiff presented no evidence suggesting bad faith on the part of Anadarko. Accordingly, we discern no error in the district court's decision to dismiss Anadarko despite Plaintiff's arguments regarding spoliation of evidence.

VI.

After a de novo review of the record, we hold that the undisputed facts leave no room for finding liability against Anadarko, Stokes & Speihler, or Zeilinski under the various theories asserted. Under the Anadarko/Parker contract and based on the conduct of the parties, Anadarko and its company representatives did not have operational

control over the work performed by Parker. A violation of MMS regulations, even if one occurred, does not give rise to a cause of action. The hose that ruptured was not in the custody of Anadarko or its representatives, at the time of the accident and the rig was not part of Anadarko's platform. We find no error in the decision not to sanction Anadarko for the loss of the hose. The judgment of the district court is

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-30659

CARL FRUGE, on behalf of Casey Fruge; DARLA MONK FRUGE, on behalf of Case Fruge; DERRICK FRUGE

Plaintiffs-Appellants

v.

PARKER DRILLING COMPANY; ET AL

Defendants

ANADARKO PETROLEUM CORPORATION; STOKES & SPIEHLER USA INCORPORATED; GREG ZIELINSKI INCORPORATED

Defendants-Appellees

Appeals from the United States District Court for the Western District of Louisiana, Lafayette

ON PETITION FOR REHEARING EN BANC

(Filed Aug. 19, 2003)

(Opinion July 23, 2003, 5 Cir., ___, ___ F.3d ___)

Before DUHÉ, EMILIO M. GARZA, and DeMOSS, Circuit Judges.

PER CURIAM:

(✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that

the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ John M. Duhé, Jr.
United States Circuit Judge

REHG-6a

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

CARL FRUGE, ET AL,

Plaintiffs,

v.

PARKER DRILLING CO., ET AL,

Defendants.

CIVIL ACTION
NO. 00-CV-2792
April 4, 2002

TRANSCRIPT OF PROCEEDINGS

The above-entitled proceedings came on to be heard before THE HONORABLE TUCKER L. MELANCON, UNITED STATES DISTRICT JUDGE.

APPEARANCES:

FOR THE PLAINTIFFS:

MR. JENNINGS B. JONES
Attorney at Law
Post Office Drawer 1550
Cameron, Louisiana 70631

FOR PARKER DRILLING OFFSHORE USA:

MR. STEVEN K. BEST
Attorney at Law
3850 North Causeway Boulevard, Ste. 950
Metairie, Louisiana 7000

FOR STOKES & SPIEHLER USA, INC.:

MR. H. LEE LEONARD
Attorney at Law
Post Office Box 91823
Lafayette, Louisiana 70509-1823

* * *

[70]That's the extent of the relevant testimony, I believe.

THE COURT: All right. Well, let me just say I think that my Supreme Court, the Fifth Circuit, has covered the issue in the Coulter case. I don't see anything in the record that has been presented to me in competent summary judgment evidence form that would take the facts of this case outside the language from Coulter that I read about operation and control. I think the issue of 2317 and 2322 via Article 466 were completely addressed to cover this situation. I'm going to grant the defendants' motion for summary judgment. I will say, though, I'm going to allow, just to make sure we don't walk of a cliff here – and I address this to Mr. Jones, officer of the Court – if after he goes back and he reads those depositions, if he can make a good faith assertion to this court under Coulter that, Judge, look at Page 9, Lines 23 through 25 and whatever else, I'll give him within ten days to file a motion for me to reconsider my action on this; but I'm granting the summary judgment right now. And I'm granting them for the reasons that have been stated in the dialogue I have had with the lawyers on the case and argument, starting with the plaintiff or defendant and then plaintiff and then defendant again, those reasons and the reasons I have just given.

MR. JONES: I'd just like to make a comment on your business of what you are going to let me continue to do. What

* * *

[76] he's going to prevail against the defendant that's got a legal obligation.

MR. JONES: Well, what I expect to say to Your Honor is when there is a dispute of fact about something, I'm entitled to my day in court so they can decide who is telling the truth, and that's my point here; and if you throw these people out, both of them, then I'm denied that right. That's why I think you should not do it.

THE COURT: Well, that's why I made again the reference to operation and control. But I think the record is clear what you think the situation is.

So I'm going to go ahead and – I think I didn't mention this before but, Mr. Weathers, for the record, the earlier motion of Anadarko that I granted, I think that's Record Document 52, I'm going to go ahead and grant the motion, the summary judgment motion of Stokes and Spiehler for the reasons that I have said here today in connection with the argument that was just made by Mr. Leonard and Mr. Jones, as well as Mr. Felder and the pleadings that have been filed and the question that I have asked throughout – I hate to do that to the Fifth Circuit if they ever get to read this, but it is almost like you've got to read the record. But it's real clear in my view, based on the current record, that the motion should be granted so I'm going to go ahead and grant that.

Now I believe there is another motion that was filed

* * *

[79]try it with the facts that have all been corrected, so there is no real pushy reason to why we have to roll along too fast and maybe make a mistake.

THE COURT: The only one reason I have got, and I'm sincere and earnest, and I want Mr. and Mrs.

Fruge to know that is because of the oath I took to follow the law, period, end of subject.

MR. JONES: Well, I don't have any problem like that. I just wanted to say I think it would be your discretion if you wanted to let us go out there and take the deposition of these people again.

THE COURT: I've ruled on that.

MR. JONES: I know you have.

THE COURT: All right. I'm going to go ahead and grant the motion for summary judgment. And that is Record Document 89 filed by Zielinski, Greg Zielinski, Inc.; and I'm going to dismiss those claims. And those, again, for the reasons that I have given previously, the discussions with the lawyers, their arguments, comments I have made and the reasons I have given as it relates to operation and control in this case.

Now I'm going to go ahead and we'll have – I'll reiterate, I'll give Mr. Jones ten days to go to the present record and say, see, Judge, if you read these pages of these guys' depositions and these liens, even you will be able to get

* * *

43 U.S.C.A. § 1333

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction.

(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal Jurisdiction located within a State: *Provided, however*, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2)(A) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish

in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

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30 CFR Ch. 11 § 250.105

Act means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

Affected State means with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved under the provisions of the Act, any State:

(1) The laws of which are declared, under section 4(a)(2) of the Act, to be the law of the Untied States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving, or according to the proposed activity, will receive oil for processing, refining, or transshipment that was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human

environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

Air pollutant means any airborne agent or combination of agents for which the Environmental Protection Agency (EPA) has established, under section 109 of the Clean Air Act, national primary or secondary ambient air quality standards.

Analyzed geological information means data collected under a permit or a lease that have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analysis, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

Archaeological interest means capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.

Archaeological resource means any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest.

Attainment area means, for any air pollutant, an area that is shown by monitored data or that is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) not to exceed any primary or secondary ambient air quality standards established by EPA.

Best available and safest technology (BAST) means the best available and safest technologies that the director determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment.

Best available control technology (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation, taking into account energy, environmental and economic impacts, and other costs. The Regional Director will verify the BACT on a case-by-case basis, and it may include reductions achieved through the application of processes, systems, and techniques for the control of each air pollutant.

Coastal environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

Coastal zone means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder)

strongly influenced by each other and in proximity to the shorelands of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the U.S. territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, under the authority in section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972.

Competitive reservoir means a reservoir in which there are one or more producible or producing well completions on each of two or more leases or portions of leases, with different lease operating interests, from which the lessees plan future production.

Correlative rights when used with respect to lessees of adjacent leases, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, minerals from a common source.

Data means facts and statistics, measurements, or samples that have not been analyzed, processed, or interpreted.

Departures means approvals granted by the appropriate MMS representative for operating requirements/procedures other than those specified in the regulations found in this part. These requirements/procedures may be necessary to control a well; properly develop a lease; conserve natural resources, or protect life, property, or the marine, coastal, or human environment.

Development means those activities that take place following discovery of minerals in paying quantities, including but not limited to geophysical activity, drilling, platform construction, and operation of all directly related onshore support facilities, and which are for the purpose of producing the minerals discovered.

Director means the Director of MMS of the U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

District Supervisor means the MMS officer with authority and responsibility for operations or other designated program functions for a district within an MMS Region.

Easement means an authorization for a nonpossessory, nonexclusive interest in a portion of the OCS, whether leased or unleased, which specifies the rights of the holder to use the area embraced in the easement in a manner consistent with the terms and conditions of the granting authority.

Eastern Gulf of Mexico means all OCS areas of the Gulf of Mexico the Director decides are adjacent to the State of Florida. The Eastern Gulf of Mexico is not the same as the Eastern Planning Area, an area established for OCS lease sales.

Emission offsets means emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed Exploration Plan (EP) or Development and Production Plan (DPP).

Enhanced recovery operations means pressure maintenance operations secondary and tertiary recovery, cycling, and similar recovery operations that alter the

natural forces in a reservoir to increase the ultimate recovery of oil or gas.

Existing facility, as used in § 250.303, means an OCS facility described in an Exploration Plan or a Development and Production Plan approved before June 2, 1980.

Exploration means the commercial search for oil, gas, or sulphur. Activities classified as exploration include but are not limited to:

(1) Geophysical and geological (G&G) surveys using magnetic, gravity, seismic reflection, seismic refraction, gas sniffers, coring, or other systems to detect or imply the presence of oil, gas, or sulphur; and

(2) Any drilling conducted for the purpose of searching for commercial quantities of oil, gas, and sulphur, including the drilling of any additional well needed to delineate any reservoir to enable the lessee to decide whether to proceed with development and production.

Facility means:

(1) As used in § 250.130, any installation permanently or temporarily attached to the seabed on the OCS (including manmade islands and bottom-sitting structures). It includes mobile offshore drilling units (MODUs) or other vessels engaged in drilling or downhole operations, used for oil, gas, or sulphur drilling, production, or related activities. It also includes facilities for product measurement and royalty determination (e.g., Lease Automatic Custody Transfer units, gas meters) of OCS production on installations not on the OCS. Any group of OCS installations interconnected with walkways, or any group of installations that includes a central or primary installation with processing equipment and one or more

satellite or secondary installations is a single facility. The Regional Supervisor may decide that the complexity of the individual installations justifies their classification as separate facilities.

(2) As used in § 250.303, means any installation or device permanently or temporarily attached to the seabed. It includes mobile offshore drilling units (MODUs), even while operating in the "tender assist" mode (i.e. with skid-off drilling units) or other vessels engaged in drilling or downhole operations. They are used for exploration, development, and production activities for oil, gas, or sulphur and emit or have the potential to emit any air pollutant from one or more sources. During production, multiple installations or devices are a single facility if the installations or devices are at a single site. Any vessel used to transfer production from an offshore facility is part of the facility while it is physically attached to the facility.

(3) As used in § 250.417(b), means a vessel, a structure, or an artificial island used for drilling, well-completion, well-workover, and/or production operations.

Gas reservoir means a reservoir that contains hydrocarbons predominantly in a gaseous (single-phase) state.

Gas-well completion means a well completed in a gas reservoir or in the associated gas-cap of an oil reservoir.

Governor means the Governor of a State, or the person or entity designated by, or under, State law to exercise the powers granted to such Governor under the Act.

H_2S absent means:

(1) Drilling, logging, coring, testing, or producing operations have confirmed the absence of H_2S in

concentrations that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S; or

(2) Drilling in the surrounding areas and correlation of geological and seismic data with equivalent stratigraphic units have confirmed an absence of H_2S throughout the area to be drilled.

H_2S present means drilling, logging, coring, testing, or producing operations have confirmed the presence of H_2S in concentrations and volumes that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S.

H_2S unknown means the designation of a zone or geologic formation where neither the presence nor absence of H_2S has been confirmed.

Human environment means the physical, social, and economic components, conditions, and factors that interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Interpreted geological information means geological knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of data and analyzed geological information.

Interpreted geological information means geophysical knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geophysical data and analyzed geophysical information.

Lease means an agreement that is issued under section 8 or maintained under section 6 of the Act and that authorizes exploration for, and development and production of minerals. The term also means the area covered by that authorization, whichever the context requires.

Lease term pipelines means those pipelines owned and operated by a lessee or operator that are completely contained within the boundaries of a single lease, unit, or contiguous (not cornering) leases of that *lessee* or operator.

Lessee means a person who has entered into a lease with the Untied States to explore for, develop, and produce the leased minerals. The term lessee also includes the MMS-approved assignee of the lease, and the owner or the MMS-approved assignee of operating rights for the lease.

Major Federal action means any action or proposal by the Secretary that is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. (2)(C) (i.e., an action that will have a significant impact on the quality of the human environment requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act).

Marine environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the marine ecosystem. These include the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

Material remains means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

Maximum efficient rate (MER) means the maximum sustainable daily oil or gas withdrawal rate from a reservoir that will permit economic development and depletion of that reservoir without detriment to ultimate recovery.

Maximum production rate (MPR) means the approved maximum daily rate at which oil or gas may be produced from a specified oil-well or gas-well completion.

Minerals includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals that are authorized by an Act of Congress to be produced.

Natural resources includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power or the use of water for the production of power.

Nonattainment area means, for any air pollutant, an area that is shown by monitored data or that is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) to exceed any primary or secondary ambient air quality standard established by EPA.

Nonsensitive reservoir means a reservoir in which ultimate recovery is not decreased by high reservoir production rates.

Oil reservoir means a reservoir that contains hydrocarbons predominantly in a liquid (single-phase) state.

Oil reservoir with an associated gas cap means a reservoir that contains hydrocarbons in both a liquid and gaseous (two-phase) state.

Oil-well completion means a well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

Operating rights means any interest held in a lease with the right to explore for, develop, and produce leased substances.

Operator means the person the lessee(s) designates as having control or management of operations on the leased area or a portion thereof. An operator may be a lessee, the MMS-approved designed agent of the lessee(s), or the holder of operating rights under an MMS-approved operating rights assignment.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) whose subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person includes, in addition to a natural person, an association (including partnerships and trusts), a State, a political subdivision of a State, or a private, public, or municipal corporation.

Pipelines are the piping, risers, and appurtenances installed for transporting oil, gas, sulphur, and produced waters.

Processed geological or geophysical information means data collected under a permit or a lease that have been processed or reprocessed. Processing involves changing the form of data to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements. Reprocessing is the additional processing other than ordinary processing used in the general course of evaluation. Reprocessing operations may include varying identified parameters for the detailed study of a specific problem area.

Production means those activities that take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and workover operations.

Production areas are those areas where flammable petroleum gas, volatile liquids or sulphur are produced, processed (e.g., compressed), stored, transferred (e.g., pumped), or otherwise handled before entering the transportation process.

Projected emissions means emissions, either controlled or uncontrolled, from a source or sources.

Regional Director means the MMS officer with responsibility and authority for a Region within MMS.

Regional Supervisor means the MMS officer with responsibility and authority for operations or other designated program functions within an MMS Region.

Right-of-use means any authorization issued under this part to use OCS lands.

Right-of-way pipelines are those pipelines that are contained within:

(1) The boundaries of a single lease or unit, but are not owned and operated by a lessee or operator of that lease or unit;

(2) The boundaries of contiguous (not cornering) leases that do not have a common lessee or operator;

(3) The boundaries of contiguous (not cornering) leases that have a common lessee or operator but are not owned and operated by that common lessee or operator; or

(4) An unleased block(s).

Routine operations, for the purposes of subpart F, means any of the following operations conducted on a well with the tree installed:

(1) Cutting paraffin;

(2) Removing and setting pump-through-type tubing plugs, gas-lift valves, and subsurface safety valves that can be removed by wireline operations;

(3) Bailing sand;

(4) Pressure surveys;

(5) Swabbing;

(6) Scale or corrosion treatment;

(7) Caliper and gauge surveys;

(8) Corrosion inhibitor treatment;

(9) Removing or replacing subsurface pumps;

(10) Through-tubing logging (diagnostics);

(11) Wireline fishing;

(12) Setting and retrieving other sub-surface flow-control devices; and

(13) Acid treatments.

Sensitive reservoir means a reservoir in which high reservoir production rates will decrease ultimate recovery. For submitting the first MER, all oil reservoirs with an associated gas cap are classified as sensitive.

Significant archaeological resource means those archaeological resources that meet the criteria of significance for eligibility to the National Register of Historic Places as defined in 36 CFR 60.4, or its successor.

Suspension means a granted or directed deferral of the requirement to produce (Suspension of Production (SOP)) or to conduct leaseholding operations (Suspension of Operations (SOO)).

Waste of oil, gas, or sulphur means:

(1) The physical waste of oil, gas, or sulphur;

(2) The inefficient, excessive, or improper use, or the unnecessary dissipation of reservoir energy;

(3) The locating, spacing, drilling, equipping, operating, or producing of any oil, gas, or sulphur well(s) in a manner that causes or tends to cause a reduction in the quantity of oil, gas, or sulphur ultimately recoverable under prudent and proper operations or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; or

(4) The inefficient storage of oil.

Welding means all activities connected with welding, including hot tapping and burning.

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Wellbay is the area on a facility within the perimeter of the outermost wellheads.

Well-completion operations means the work conducted to establish production from a well after the production-casing string has been set, cemented, and pressure-tested.

Well-control fluid means drilling mud, completion fluid, or workover fluid as appropriate to the particular operation being conducted.

Western Gulf of Mexico means all OCS areas of the Gulf of Mexico except those the Director decides are adjacent to the State of Florida. The Western Gulf of Mexico is not the same as the Western Planning Area, an area established for OCS lease sales.

Workover operations means the work conducted on wells after the initial well-completion operation for the purpose of maintaining or restoring the productivity of a well.

You means a lessee, the owner or holder of operating rights, a designated agent of the lessee(s), a pipeline right-of-way holder, or a State lessee granted a right-of-use and easement.

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§ 250.105 Definitions.

Terms used in this part will have the meanings given in the act and as defined in this section:

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§ 250.106 What standards will the Director use to regulate lease operations?

The Director will regulate all operations under a lease, right-of-use and easement, or right-of-way to:

(a) Promote orderly exploration, development, and production of mineral resources;

(b) Prevent injury or loss of life;

(c) Prevent damage to or waste of any natural resource, property, or the environment; and

(d) Cooperate and consult with affected States, local governments, other interested parties, and relevant Federal agencies.

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§ 260.107 What must I do to protect health, safety, property, and the environment?

(a) You must protect health, safety, property, and the environment by:

(1) Performing all operations in a safe and workmanlike manner; and

(2) Maintaining all equipment in a safe condition.

(b) You must immediately control, remove, or otherwise correct any hazardous oil and gas accumulation or other health, safety, or fire hazard.

(c) You must use the best available and safest technology (BAST) whenever practical on all exploration, development, and production operations. In general, we consider your compliance with MMS regulations to be the use of BAST.

(d) The Director may require additional measures to ensure the use of BAST:

(1) To avoid the failure of equipment that would have a significant effect on safety, health, or the environment;

(2) If it is economically feasible; and

(3) If the benefits outweigh the costs.

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§ 250.146 Who is responsible for fulfilling leasehold obligations?

(a) When you are not the sole lessee, you and your co-lessee(s) are jointly and severally responsible for fulfilling your obligations under the provisions of 30 CFR parts 250 through 282, unless otherwise provided in these regulations.

(b) If your designated operator fails to fulfill any of your obligations under 30 CFR parts 250 through 282, the Regional Supervisor may require you or any or all of your co-lessees to fulfill those obligations or other operational obligations under the Act, the lease, or the regulations.

(c) Whenever the regulations in 30 CFR parts 250 through 282 require the lessee to meet a requirement or perform an action, the lessee, operator (if one has been designated), and the person actually performing the activity to which the requirement applies are jointly and severally responsible for complying with the regulation.

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§ 250.400 Control of wells.

The lessee shall take necessary precautions to keep its wells under control at all times. The lessee shall utilize the best available and safest drilling technology in order to enhance the evaluation of conditions of abnormal pressure and to minimize the potential for the well to flow or kick. The lessee shall utilize personnel who are trained and competent and shall utilize and maintain equipment and materials necessary to assure the safety and protection of personnel, equipment, natural resources, and the environment.

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§ 250.413 Supervision, surveillance, and training.

(a) The lessee shall provide onsite supervision of drilling operations on a 24-hour per day basis.

(b) From the time drilling operations are initiated and until the well is completed or abandoned, a member of the drilling crew or the toolpusher shall maintain rig-floor surveillance continuously, unless the well is secured with BOP's, bridge plugs, packers, or cement plugs.

(c) Lessee and drilling contractor personnel must be trained and qualified according to Subpart O of this part.

Records of specific training which lessee and drilling contractor personnel have successfully completed, the dates of completion, and the names and dates of the courses shall be maintained at the drill site.

[53 FR 10690, Apr. 1, 1988. Redesignated at 63 FR 29479, May 29, 1998; 64 FR 9065, Feb. 24, 1999]

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§ 250.514 Well-control fluids, equipment, and operations.

(a) Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances, including subfreezing conditions. The well shall be continuously monitored during well-completion operations and shall not be left unattended at any time unless the well is shut in and secured.

(b) The following well-control-fluid equipment shall be installed, maintained, and utilized:

(1) A fill-up line above the uppermost BOP;

(2) A well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips; and

(3) A recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

(c) When coming out of the hole with drill pipe, the annulus shall be filled with well-control fluid before the change in such fluid level decreases the hydrostatic pressure 75 pounds per square inch (psi) or every five

stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hole shall be utilized.